

Board of Judicial Policy and Administration
Minutes
June 10, 2009

The Board of Judicial Policy and Administration met in Casper on June 10, 2009. In attendance were Chief Justice Bart Voigt, Justice Marilyn Kite, Justice Jim Burke, Judge Jeff Donnell, Judge John Brooks, Judge John Perry, Judge Robert Castor, Judge Victoria Schofield and Judge Wes Roberts. Holly Hansen, Joann Odendahl, and Ronda Munger also attended. Justice William Hill and Judge Dan Price participated by phone. Judge Roberta Coates appeared in person and Judge Tim Day participated by phone during the proposed treatment court rules portion of the meeting.

Old Business

Committee Updates

Court Technology Advisory Committee - Chief Justice Bart Voigt reported on the work of the CTAC committee. At this point, there is a great deal of overlap between CTAC work and the Supreme Court IT staff. The following projects are moving forward:

- The process of designing a District Court case management system has begun. The design committee is in the process of gathering information from all the district courts and moving the process forward.
- The electronic citation project was initially funded, but in the recent budget cuts that money was cut.
- The IT staff is working on video appearance technology. When it is all said and done, it is important that the equipment and system be the same in all counties. Sweetwater County just recently installed a system – Judges Forgey and Schofield currently have video appearance capability. Judge Forgey reported that the cooperation between the county and the court was really impressive. Judge Schofield is concerned about document transfer and suggested a digitizing tablet so that the defendant can sign a judgment and sentence. She is also concerned about the additional court rules that require the defendant to appear in person, so she does not use the video arraignments. Chief Justice Voigt acknowledged that some day the Board or the Supreme Court will need to figure out the legality of video appearances. Some judges have expressed interest in using the video appearances in civil cases for doctor testimony.
- The State Bar office is in the process of implementing a new computer system that transfers attorney information directly to the Supreme Court.
- James Bothamley is working on a system of putting protection orders out on the web so that law enforcement officers know when a protection order has been issued and served. The system will query the courts every five minutes for this information.
- Teton County requested \$8,000 for an internal communication system, but that request was turned down.

Court Security Commission - Judge Jeff Donnell reported that the Court Security Commission is scheduled to have a meeting in mid July. During the July meeting they will be finalizing recommendations for training and other details for the formal report that will be submitted to the Legislature. One of the law enforcement groups came up with a list of equipment that they felt was mandatory, or at least recommended. Not one courthouse has all of the equipment. Only about one-third of the facilities don't even have magnetometers or hand held metal detectors. The Commission was surprised at how little equipment is actually in use. Judge Donnell reported that the Attorney General's Office issued an opinion stating that the counties do not have the authority to regulate fire arms use in courthouses or public buildings. It may be that the Court Security Commission addresses the issue and attempts to get the counties some kind of authority to regulate firearms in county buildings.

Court Records Committee - Chief Justice Voigt provided an update on the Court Records Committee. The committee has been working to create a court records policy that the clerks of court can use to explain when records can be provided or when they are considered confidential. It is the confidential nature of some records that is the sticking point. The issue of confidentiality led the committee to also draft redaction rules – the thinking being that if the information is not in the records to begin with then that would be the better solution. There has been a great deal of discussion with the Attorney General's Office on this topic. Additionally, the committee is looking at some judicial review language so that if someone is denied access there is an avenue for recourse. The Board agreed that the committee was on the right track and that it should continue its work. The Board asked that the policy be sent to judges, clerks and the bar for comment.

Access to Justice Commission - Justice Jim Burke informed the Board that the AJC was up and running. He is pleased with the efforts of the group and believes that it has an important, if not critical, task at hand. The AJC created two subcommittees, the Resource Development subcommittee (chaired by Walter Eggers), and the Delivery System subcommittee (chaired by Dona Playton). The goal of the AJC is to end up with a system that provides statewide delivery of competent civil legal services for those who cannot afford them. Wyoming Legal Services used to provide this service, but lost it funding last October. Legal Aid of Wyoming, run by Ray Macchia, is the interim provider for these services. Ray Macchia and Cory Erickson have submitted separate grant applications to be named Wyoming's permanent provider. Justice Burke pointed out that even if a permanent provider is named, the federal grant monies are not enough to provide adequate services and additional funding is needed. Judge Roberts is heading up a subcommittee to work on the Wyoming tribal issues regarding civil legal services. Justice Burke also noted that Larry Wolfe, attorney for Holland and Hart, is drafting a white paper on access to justice issues in Wyoming. The AJC is working to get information from many community organizations and intends to conduct public hearings to help garner support. Justice Burke also discussed the pro bono rules for Wyoming lawyers and how the bar is supposed to aspire to provide pro bono services, however, Justice Burke expressed his concern that the rules are not clear. He broached the topic of the Judiciary's role in this effort. There has been some discussion that in order to have a competent statewide system, then there should be representation in every county, not unlike the public defender's office schema.

Legislative Committee – Holly Hansen provided an update on the work of the Legislative Committee. She reported on the following bills from the last Legislative session:

- HB 1, Sections 101 & 311- Section 101 contains a footnote providing for the district court case management system. Of special note is a requirement that the system collect specific juvenile information. Section 311 contains language giving the Governor the authority to ask the Judiciary to reduce its existing budget in a similar fashion to the Executive Branch. The district judges and the Supreme Court have submitted their proposals for cuts, and the Governor seems pleased with the cooperation of the Judiciary. The reductions will probably carry over into the 2010/2011 budget.
- HB 26 Circuit Court Magistrates-This bill was offered by the sixth judicial district. The bill expands the authority of non law-trained magistrates to that of law trained magistrates.
- HB 55 Location of Circuit Judges-This bill allows the Supreme Court to evaluate where circuit judges reside.
- HB 144 Public Finance Website-Holly thought this bill was interesting and so she included it for the Board's review. The Department of Administration and Information will be creating a website that will contain financial information from all branches of government. The website will provide Wyoming taxpayers with one location to look at how each of the branches of government spends their general fund dollars. This information is already available, but it is hard to find and in several different locations. This website will make it easy to find.

Committee to review the Code of Judicial Conduct – Justice Kite provided the Board with a brief history of how proposed Rule 4.2 of the Code of Judicial Conduct has proceeded through the process and is before the Board. During the December Board meeting, the Board approved and recommended approval to the Supreme Court of a draft proposal submitted by a committee to revise the Code of Judicial Conduct. Some questions were posed during the Supreme Court discussions and some additional changes were brought back to the Board. The focus of the discussion was on the language in 4.2, which addresses what judges can and can't do during a retention election year. The Board discussed Rule 4.2 at length. Judge Castor moved and Justice Kite seconded a motion to recommend the Supreme Court add two additional comments in the comment section of Rule 4.2. Motion passed 8 to 1. The Board also discussed the creation of a commission or advisory committee of some sort that can answer questions judges may have when they face opposition in a retention election year. The Conduct and Ethics Committee does not provide advisory opinions, and so there is no place for judges to go to ask questions or to seek guidance when issues arise. Judge Castor reported that there are 34 states that have some kind of advisory committee from which judges can seek advice. The Board agreed there should be an entity to address judges' questions.

Court Reporter Rules - Judge John Brooks reminded the Board that three years ago the Supreme Court adopted, upon the Board's recommendation, District Court Rules for Court Reporters. Since that time, the court reporter's association submitted to Judge Brooks some proposed changes to the rules and asked that he bring them before the Board for recommendation to the Supreme Court. The changes include amendments to

the certification requirements and to the court reporters official association title. Judge Brooks reported that during its December meeting, the amendments were approved by the district judges' conference. Judge Brooks moved and Judge Perry seconded a motion to approve the proposed changes and to have the rules published in the Uniform Rules for District Courts. Motion carried unanimously. The Board discussed the lack of available court reporters and other issues that are likely to arise in the future.

New Business

District Court Library Fees – Judge Donnell informed the Board that the Albany County Bar Association has money in an account that has been generated by the \$25 library fee. Currently, Albany County is not maintaining a library, but has used the funds in the past to purchase improvements for the courtroom – for example a DVD player was purchased. Recently, the Order allowing the library fees was reviewed and some concern was raised about using the money for things other than library materials. Judge Donnell suggested some additional language be added to the Order to allow the funds to be used, not only for library materials, but also for court improvements or equipment, or for such other purchases that may from time to time be necessary and approved by the district court judge. Justice Kite moved and Judge Castor seconded a motion to recommend the Supreme Court revise the existing library fee Order to include that language. Motion passed unanimously.

Court Interpreters – Judge Donnell led a discussion of the Board regarding court interpreters. Albany County is fortunate to have a federally certified interpreter and she is suggesting changes be made to the protocol for court interpreters in Wyoming. Judge Donnell provided a proposal to require interpreters to be certified in Wyoming. Wyoming is one of eight states that do not have any requirements for interpreters. Chief Justice Voigt handed out the Pennsylvania court interpreters regulations. The Board briefly reviewed the Pennsylvania regulations and agreed that it is time that the Board addresses this issue. Judge Donnell agreed to take a hard look at the Pennsylvania regulations and see if they could be modified to fit the situation in Wyoming. Holly suggested contacting the National Center for State Courts. She also suggested pairing up with one or two other states in the area, so that we can share training dates and materials. The Board discussed the problem of availability of court interpreters and the fact that if the certification standards are very difficult, there will be no court interpreters available in some areas.

W.S. 7-2-101, Definition of a Peace Officer – Chief Justice Voigt brought Wyoming's peace officer statute to the attention of the Board. The Supreme Court recently hired a court security officer and found it necessary to have him certified as a highway patrolman because the definition of a peace officer, found in W.S. 7-2-101, does not include court security officers. Chief Justice Voigt brought this issue to the Board because he wanted to make sure any amendment to W.S. 7-2-101, so that court security officers are included as peace officers, would not conflict with anything the Court Security Commission is doing. Judge Donnell does not believe a change to W.S. 7-2-101 will conflict with anything the Court Security Commission is doing.

Peremptory Disqualification Rule – Judge Dan Price raised the issue of cost of peremptory challenges of judges in Wyoming. In light of all the budget cuts, Judge Price

and several other judges believe that a good deal of state taxpayer dollars are spent because attorneys are regularly and as a matter of course swearing some judges off their cases. In the smaller counties it is necessary to bring in judges from other districts to cover those cases. The Board discussed the possibility of suspending the peremptory challenge rule for a while. In those cases where judges must travel, the local court budget is supposed to cover the travel expenses of the out of district judge, and this is becoming very expensive to the state. The Board also discussed asking the attorneys who use the peremptory challenge rule to pay the travel expenses of the non-local judge. Joann Odendahl agreed to collect fiscal information regarding the expense to the state for traveling judges. Judge Brooks also agreed to send an email to district judges to get information on the travel expenses for peremptory challenge reasons.

Rules Regarding Court-Supervised Treatment Programs - Chief Justice Voigt provided the Board with a brief overview and history of the proposed Rules Governing Judicial Participation in Court-Supervised Treatment Programs. The drug court statutes were changed this past year. The new statutes task the Supreme Court with drafting rules to govern how judges participate in court-supervised treatment programs. The proposed rules were sent out to the judges. Judge Tom Campbell, president of the circuit judges' conference, set up a circuit court judges committee to review them. Judge Curt Haws, Judge Roberta Coates, and Judge Tim Day reviewed the proposed rules and provided written comments and recommended changes to the Board. Judge Coates then appeared before the board and explained three different categories of changes to the proposed rules. Judge Coates and Judge Day covered two pages of specific changes to the rules. One issue that generated a lot of philosophical discussion was the suggested change that makes it possible for a magistrate to participate if his or her salary is paid for or absorbed by an independent entity. Joann Odendahl agreed to ask for copies of all the contracts used for magistrate services in drug courts across the state. The Board philosophically agreed that magistrates should be paid out of the state-funded court budgets and that a request should be made to transfer the funds for magistrates out of the health department's budget and put in the Judiciary's budget. Judge Donnell moved and Judge Castor seconded a motion to leave Rule 16 in the proposed rules. Motion passed 5 to 4. Chief Justice Voigt will revise the rules based on the comments of the Board and provide a revised copy for the next meeting.

Resolution

Justice Kite moved the Board adopt a resolution thanking Holly Hansen for her years of service to the Wyoming Judiciary. Motion passed unanimously.

Board adjourned 1:30 p.m.

Schedule of Future Meetings

September 14, 2009 Evanston

December 2, 2009 Casper

Approved by email 8-6-09